

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DEANN TITUS)	
Claimant)	
VS.)	
)	Docket No. 131,220
HALSTEAD HOSPITAL, INC.)	
Respondent)	
AND)	
)	
ITT HARTFORD)	
Insurance Carrier)	

ORDER

Both claimant and respondent appeal from the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated July 14, 1998, wherein the Administrative Law Judge denied respondent a credit for an overpayment of disability benefits against already provided medical care but granted the credit against future medical treatment expenses.

ISSUES

Respondent alleges entitlement to a credit for overpayment of disability compensation provided. Claimant on the other hand contends the decision to grant a credit is contrary to the law and argues there should be no offset against medical expenses, past or future. These are the only issues before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The original award was entered in this matter on November 20, 1989. As part of that award, claimant was granted future medical compensation upon proper application, with Dr. Neonilo Tejano to continue as the authorized treating physician. On December 8, 1992, a preliminary hearing was held at claimant's request to discuss additional medical treatment, post award attorney fees and temporary total disability compensation, if

appropriate. Under the terms of the preliminary hearing order, also dated December 8, 1992, claimant was granted all medical bills in Claimant's Exhibit 1 to be paid by respondent, \$500.00 in post award attorney fees to claimant's attorney, and Dr. Tejano was authorized as the treating physician with instructions to proceed with any and all diagnostic tests and treatments, including surgery if deemed necessary. Respondent was ordered to pay all medical expenses incurred by claimant with Dr. Tejano. Temporary total disability compensation was not mentioned in the December 8, 1992, Order. However, respondent did voluntarily increase the permanent partial disability payments from the applicable permanent partial disability rate to \$145.65, the temporary total disability rate. Compensation was then overpaid to claimant for 70.14 weeks at \$145.65 in the stipulated amount of \$10,215.89. The amounts in question and the fact of an overpayment are not at issue having been stipulated to by the parties.

The July 1998 preliminary hearing was requested to obtain payment for medical treatment provided by Dr. Tejano in the amount of approximately \$4,372.00. Again, there was no dispute as to the amount of the bills, the fact they remained unpaid or the fact they were incurred through Dr. Tejano, the authorized treating physician. Respondent objected to the payment, arguing that a credit should be granted against the \$10,215.89 permanent partial disability overpaid. Claimant argues entitlement to both the overpayment of and payment of the additional medical expenses already incurred as well as any future medical expenses to be incurred.

The Administrative Law Judge, in reviewing a multitude of workers compensation statutes dealing with reimbursements and overpayments, found the equitable remedy to be to allow respondent a credit against future medical expenses incurred by claimant post award but not against the medical expenses incurred prior to April 1, 1998, pursuant to the court's previous order.

A review of the Workers Compensation Act fails to uncover any statutory or case law which would allow such credit to be granted. There is no provision in the Act which allows an offset of disability benefits against medical benefits.

The Appeals Board finds that the Administrative Law Judge exceeded his jurisdiction under K.S.A. 44-551 in granting a credit to be applied against medical expenses incurred after April 1, 1998, for the permanent partial disability overpayment stipulated by the parties.

However, the Appeals Board notes the original award issued in this matter on November 20, 1989, granted claimant a 45 percent permanent partial disability. That award was reduced by the January 26, 1990, Order of Workers Compensation Director

Robert A. Anderson to a 20 percent permanent partial disability. In that Order, claimant was granted permanent disability at the rate of \$29.13 per week.

After the 1992 preliminary hearing, the respondent voluntarily increased these payments from the permanent disability rate of \$29.13 per week to the temporary total disability rate of \$145.65. In effect, the respondent voluntarily paid temporary total disability compensation while claimant was under the ongoing treatment of the authorized treating physician, Dr. Tejano.

K.S.A. 1997 Supp. 44-534a specifically addresses temporary total disability benefits paid by an employer either voluntarily or pursuant to an award, and later reduced. Any such overpayment, if applicable to the circumstances, is to be determined by the director and any reimbursement would then have to be certified to the commissioner of insurance. The Appeals Board will not comment on whether any such reimbursement would be appropriate under these circumstances.

The Appeals Board does, however, conclude that the credit granted by the Administrative Law Judge in the July 14, 1998, Order is inappropriate and, in so allowing the credit against future medical expenses, the Administrative Law Judge exceeded his jurisdiction under K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated July 14, 1998, should be, and is hereby, reversed and respondent's request for a credit for the overpayment of \$10,215.89 as permanent partial disability compensation is hereby denied.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Frederick L. Haag, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director